

Rain or
Snow Tonight.

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WRIGHT QUASHES TRANSFER SUIT; SAYS LAW LACKS

No Way to Force Capital
Traction Company to Re-
ciprocate, He Rules.

RELIEF MUST COME THROUGH CONGRESS

Declares Statute Is Clear on Point
Involved—Plaintiff to File
Appeal.

Universal transfer agitation received a temporary setback today when Justice Wright, in the District Supreme Court, dismissed the suit of the receiver of the Baltimore and Washington Transit Company to compel the Capital Traction Company to exchange transfers at Fourteenth and Kennedy streets.

Lack of jurisdiction was the grounds on which the bill was quashed.

The court hinted that the plaintiff and other universal transfer advocates, must look to Congress for relief.

Attorneys for the plaintiff noted an appeal.

Not Court's Function.

Justice Wright held that it is not the function of judicial tribunals to undertake the determination of questions of public or governmental policy. "Such questions belong either to the legislative or the executive departments," he said, "and have no place in the duties of the judiciary, the principal question in the suit being the fixing of a proportionate rate between the two companies."

"If the courts were asked to determine the rates of the companies, it would require them to accommodate the operation of their cars, I apprehend that such a question was one of public policy, enforceable by the enactment of a law upon the subject; and was therefore outside the power of the court."

Sees No Difference.

"My mind is unable to appreciate a difference in the principle which underlies the question which is before the court for determination here. The fixing of rates which common carriers may charge is a matter of public concern, and of public policy; to be accomplished only by legislative declaration of policy, through the enactment of a law."

"It is the function of the judicial tribunal to administer existing law, not to undertake the creation of new law, or the putting into operation of new rules for the regulation of common carriers, or for any other affairs."

"That the fixing of the proportionate rate which the companies should receive for the transportation of passengers, amounts to legislation, seems to me very clear."

Cites Statute.

After illustrating his contention of the fixing of proportionate rates and showing how, in his opinion, the act of May 28, 1908, fixing the rate to be charged by the Baltimore and Washington Transit Company does not cover the point at issue, the court says:

"If there existed a valid and constitutional law determining the proportion of 5 cents which each company should receive for the services rendered by it, and either company failed to adhere to the terms of such a statute, there might be room to make a good argument in support of a demand for the court's process to the end of requiring the unwilling company to conform to the law; but there being no law to receive, there is no power in the court to make one; and no good principle which can metamorphose this question of public policy into a justiciable question."

"The Constitution vests the legislative powers with Congress and the judicial power in the courts; and it is not within the power of the courts to create a law where the Constitution has placed them; and, being placed by the Constitution, are not to be shifted from one to the other, nor assumed by either when belonging to the other."

"The court is, therefore, required to give the opinion that it possesses, and to fix the rate of fare which the plaintiff may charge for transporting passengers from the District line to its terminus within the District, and which the defendant company shall

(Continued on Second Page.)

SMITH CHARGED WITH ASSAULT BY MORRIS BENNETT

Injured Grocer Tells the
Grand Jury of
Crime.

OWNER IDENTIFIES THE WEAPON USED

First Time Man Has Left Hospital Since Being Struck Down.

With head swathed in bandages and his hair closely clipped, Morris Bennett, the grocer who was the victim of the murderous assault and robbery on the Benning road on the morning of November 20, left Casualty Hospital this morning for the first time since he was struck down with a hatchet, and appeared before the grand jury.

He formally charged James Smith, alias Kabusta, the Chicago murder suspect, with being his assailant.

Walks Without Assistance.

Bennett was taken from the hospital to the court house in a closed carriage, but needed no assistance to walk from the street to the grand jury room. His step was brisk and he smiled pleasantly at acquaintances who congregated in the corridors to greet him.

Assault with a dangerous weapon and robbery, the combined penalties of both offenses being thirty years in prison, are the indictments which the United States attorney's office seeks to have returned. The maximum penalty of each crime is fifteen years.

Witnesses besides Bennett who testified before the grand jury were Police Capt. John C. Dalley, Sergeant McCormick, Policemen Strobel, Pottman, Trumbo, Mrs. Bennett, and John Walker. All had given their testimony by noon.

Identifies the Hatchet.

John Walker, at whose home Smith was staying at the time of the assault, identified the hatchet used by Bennett's assailant as belonging to himself. He told the grand jury how he found the hatchet and then pursued Smith and caught him in Maryland, later bringing him to the District line and turning him over to the police.

It took just twelve minutes for Bennett to tell of the deadly assault made on him. He said that Smith had come to him on the night of November 19 and asked that he take some tools belonging to him to Ninth and D streets northwest the following day, and that he consented to help him. He had started toward the city when Smith overtook him, he said, and climbed into his wagon. Shortly afterward, he alleged, Smith attacked him, and after the first blow was struck he remembered nothing till last Friday morning, when he recovered consciousness.

Passes Pleasant Christmas.

Bennett's wife and baby spent considerable time with him at Casualty Hospital yesterday, and he said today that he passed a pleasant Christmas, in view of all circumstances.

Dr. H. W. Jaeger accompanied Bennett from the hospital to the court house today. He said the grocer may be required to remain in the hospital two or three weeks longer, as the surgeons are considering the advisability of putting his jaw in a plaster cast, as it is knitting too slowly. It was necessary to remove a piece of the bone on the point of the jaw where he was hit with the hatchet.

Long Island Property Destroyed by Fire

NEW YORK, Dec. 26.—Fires along the Long Island shore early today destroyed one of the largest hotels on the island, a Young Women's Christian Association vacation home and the William L. Mott homestead, doing \$75,000 worth of damage.

The Hotel Hungarian, frequented by foreigners and artists, was totally destroyed at Greenwood. It accommodated 500 guests, but was unoccupied. The Y. W. C. A. vacation home at Mill Neck, too, was unoccupied.

RUSSIAN SAILORS MUTINY, IS REPORT

Berlin Hears Troops Are Battling
to Quell Outbreak at
St. Petersburg.

BERLIN, Dec. 26.—Sailors in the naval ordnance yard at St. Petersburg mutinied today, and are now engaged in a battle with troops, according to a news agency dispatch.

Several of the soldiers sent to quell the outbreak are said to have been seriously wounded. The sailors are strongly entrenched and are prepared for a siege, the dispatches say.

PETER C. HAINS DENIES REPORT OF REMARRIAGE

Joins With Parents in De-
claring the Rumor Is
Preposterous.

STORY BRANDED AS BEING GROUNDLESS

Thornton Hains, Estranged Brother,
and Others, Assert Wedding
Occurred in Boston Sunday.

Peter C. Hains, Jr., former captain in the United States army, and slayer of William E. Annis, today joined his father, mother, and former wife in denying that he has remarried or will remarry Claudia Libbey Hains, whom he divorced, and on account of whom he shot and killed Annis. Upholding the credibility of the rumor are Thornton Hains, who is Peter Hains' estranged brother, and Charles H. Seeger, a New York real estate man. Of Seeger, Hains says he has never heard.

Calls It Preposterous.

"It is a preposterous rumor," said Captain Hains this morning, in the office of the Hains Concrete Company, in the Union Trust building. "A story made up of whole cloth. There is hardly a single word of truth in it."

"There is less foundation for the rumor than for any rumor I ever heard of," remarked General Hains, as his son drew breath for the last year. "I have not contemplated remarrying anyone, particularly not contemplating remarrying Claudia Libbey Hains," added her husband. "I have not seen her and shall not see her. I have not been in New York for months, and do not expect to be. My business is not in New York."

Either, as New York dispatches say this man Seeger declares. Seeger I never saw nor heard of in all my life. Nor do I know Congressman Redfield. I am not seeking reinstatement in the army. All I ask is to be let alone and to live with my children in peace."

Claims of Thornton Hains.

Quite opposed to Captain Hains' explicit and categorical denial, and to denials expressed with similar force by his father and mother, are the statements of Thornton Hains, who is very bitter toward his brother, and of Seeger, the real estate man. Thornton Hains today, in New York, expressed the belief that the remarriage took place in Boston, Sunday. Thornton Hains declared that his brother had not even thanked him for impoverishing himself in behalf of Annis' slayer.

"Of course, Claudia Libbey Hains denied it," said Mrs. Hains, mother of Peter Hains, this morning at the family residence in Washington, 818 Eighteenth street. "She knows there is not a chance in the world to get my son back again."

"It is all absurd and ridiculous," commented General Hains; "the biggest fool rumor I ever heard of. Why, there is not a true fact in the whole story except that Peter C. Hains, Jr., is my son. The rest is both untrue and base. From her home in East Milton, Mass., Mrs. Hains, talking over the long distance telephone, denied she was to remarry Hains. General Hains, now in this city, also denied the report."

Calls It Preposterous.

"Preposterous, absolutely preposterous," is the way Mrs. Peter C. Hains, mother of Captain Hains, described the New York reports this morning. "It is unthinkable that my son should take such a step."

"After the New Jersey trouble, which cost him a short term in prison, and even before that, he was through with his wife. Reports repeatedly have come from Massachusetts, presumably from the home of my son's former wife, to the effect that he was trying to effect a reconciliation. All of these have been false."

"My son wants to forget his former marital adventures. All he wants to do is to be let alone, be given an opportunity to begin life anew, and to have it made possible for him to live with his wife of children and raise them as they should be raised."

"My son never will return to his former wife. I know the workings of his mind."

(Continued on Fifth Page.)

Figures in Rumor of Remarriage



MRS. PETER C. HAINS, JR.,
Who, It Is Said, Was Wedded to Former Husband in Boston on Sunday.

MAJ. GEN. HODGES STRICKEN IN HIS APARTMENTS HERE

Retired Army Officer Passes
Away in His Apartments
at the Brighton.

Major General Charles L. Hodges, United States army, retired, who last August had a half century of gallant service in the army, died at 5 o'clock this morning in his apartments in the Brighton. He had been suffering from stomach trouble, which had its beginning when General Hodges was military governor of the province of Jolo, Philippine Islands, after the close of the Spanish-American war.

General Hodges' health had been failing rapidly for the last year. Death came as the immediate result of a hemorrhage caused by ulcerations of the stomach. With him at the time of his death was his wife, Mrs. Anna Borden Hodges, and his physician, Dr. William C. Borden. The only son of General and Mrs. Hodges, Lieut. Carol Borden Hodges, of the Twenty-ninth Infantry, is now in the Government hospital on Governor's Island, N. Y., where he recently underwent an operation for appendicitis. He has not been discharged from the hospital. An only daughter died about a year ago from illness received while a resident of the Philippines.

The career of Major General Hodges was one of the unusual ones in the history of the military service. Born in Rhode Island on March 13, 1847, at the age of twenty-four years, he enlisted in the Sixty-fifth New York Infantry, rising from the rank of private through that of corporal, being given an honorable discharge as sergeant, with special mention for gallantry, in 1865.

After the close of the civil war he at once re-enlisted in the regular army, again as a private. He was retired with the rank of major general a few months ago, having been one of the few to rise through the ranks of the regular army, rising from the rank of private without a career at West Point. At the time of his retirement he was in command of the Department of the Lakes of the army with headquarters in Chicago. He was noted for executive ability and capacity as an officer.

The exact hour of the funeral ceremony has not been set, but they will be held some time Thursday. Military honors to correspond with the rank of general will be accorded, and interment will be in Arlington Cemetery. Chaplain Brander, of Fort Myer, officiating, and an escort of troops from the fort serving during the ceremony. The funeral services will be held at the home of Dr. Borden, 1301 California street northwest.

CHRISTIAN SCIENCE HEALING IN CANAL ZONE IS ALLOWED

Ban on Practice of Mental
Healers Removed by
Taft's Order.

President Taft has decided to allow Christian Scientists to minister to the sick and suffering in the Panama canal zone, with or without pay.

An amendment to the executive order issued some time ago governing the practice of medicine at Panama was issued today, removing all discrimination against Christian Scientists, spiritualists and other "mental healers."

The original order prohibited anybody engaging in the practice of medicine without a license, a penalty of \$25 and a jail sentence being provided for violators of the order. The issuance of this caused a storm of protest, especially from the Christian Scientists.

They appealed to the President to give them the same privileges in Panama as they enjoy in the United States.

The amendment to the order reads: "Provided that nothing in this order shall be construed to prohibit the practice of the religious tenets of any church in the ministrations of the sick and suffering by mental or spiritual means, without the use of any drug or material remedy, whether gratuitously or for compensation."

Earle Pleads Guilty After Months in Jail

After four months in jail awaiting trial, George Earle pleaded guilty to thirteen offenses of larceny, in United States branch of Police Court today, withdrawing his demand for a jury trial. Maud Earle, who posed as Earle's bride, at the time of their arrest, still stands on a plea of not guilty on the same thirteen counts, and demands a jury trial.

Earle will be taken into court on Tuesday for sentence, and the trial of Mrs. Earle will be arranged for by Assistant United States Attorney Ralph Given. The larcenies are alleged to have been committed in June, July, and August last, a total of \$211 worth of goods being taken from department stores. It was found in the possession of the Earles, the police say. When arrested the couple posed as bride and bridegroom, who had just come to Washington from Baltimore on their honeymoon.

MISS BARRYMORE RECOVERS.

NEW YORK, Dec. 26.—Physicians attending Mrs. Russell G. Colt (Ethel Barrymore), declare she will be able to resume her theatrical work tomorrow. She was taken ill yesterday with acute laryngitis.

CLAIMS HE KILLED MICKLE, AND GIVES SELF UP TO POLICE

John Henry Martin Tells Baltimore Authorities He Is Responsible for Crime in
Washington, November 17.

CAPTAIN BOARDMAN TO SEND DETECTIVES FOR PRISONER

A man giving his name as John Henry Martin, of Cumberland, Md., walked into Police Headquarters in Baltimore this morning, and told Marshal Farnan that he is the man who murdered William Mickle, the Seventh street tobacconist, in Washington several weeks ago.

Martin said he was conscience-stricken, and is unable to keep the secret any longer.

Marshal Farnan immediately got in touch at Police Headquarters here with Captain Boardman over the long distance telephone, and told him of the man's alleged confession. Captain Boardman believes the man is demented. He will send one of his detectives to Baltimore to make an investigation.

HAMMER USED FOR CRUSHING SKULL OF NAVY YARD EMPLOYEE

E. R. Gillette in Serious
Condition in Hospital.
Suspects Arrested.

His skull crushed with a hammer, E. R. Gillette, a gunner's mate, stationed at the Washington Navy Yard, was taken from his home, 1350 L street southeast, today to the Naval Hospital, Ninth street and Pennsylvania avenue southeast, where it was said this afternoon his condition was serious.

A. F. Doll and J. Shepherd, marines, also stationed at the navy yard, who are alleged to have assaulted Gillette, were arrested by detectives Weedon and Pratt and Policemen Wise and Wardfield, and locked up at the Fourth precinct police station on charges of assault with intent to kill.

The attack on Gillette was made last night, while he was leaving the home of a man named Mills, who lives at 1574 L street. Gillette, it is said, was not on very friendly terms with Doll and Shepherd because of remarks made about Gillette in which it is alleged the two prisoners referred to him as a "flat foot."

Gillette was in Mills' house last evening, when, according to the story gathered by the police, Shepherd came in and asked Mills "What you doing with that flat foot here?" Just then Doll came in the house, and an argument followed. Shepherd, it is charged, grabbed Gillette and held him, while Doll picked up a hammer and beat him over the head until he was unconscious.

He was then carried into his own home, where he stayed until this morning. The police were called at noon and it was decided to remove him to a hospital. The police were advised of the affair about noon.

The naval authorities had Doll and Shepherd locked up at the navy yard, but would not let the police take them off the reservation until the proper papers had been issued by the Police Court.

When seen by the detectives Gillette said that he would prefer not to prosecute his assailants. He said it was a personal matter, and he would like to let it drop, but the police locked up the two men just the same.

Must Decide Fate.

SHANGHAI, Dec. 26.—The proposal of the rebel leaders for a meeting of the special national assembly to decide what shall be the future form of government has been put up to Manchurian chieftains in Peking by Premier Yuan. The rebel chieftains decide this move of Yuan practically forces the Manchurian leaders to decide their own fate.

PENSION INCREASE DEFINITELY FIXED

Sherwood Bill Will Call for Ex-
penditure of Seventy-five
Million.

Secretary Fisher while at the White House today confirmed previous estimates as to the amount of money that will be necessary to meet the pension increases provided for in the Sherwood bill. This bill will cost the Government \$75,000,000 a year.

The Secretary said that the Commission of Pensions had prepared a special report, showing specifically the amount of the increase. Heretofore the amount has simply been estimated and has ranged from \$25,000,000 to \$75,000,000.

The report to the chairman of the House and Senate committees on pensions. The original was turned over to the President and if the measure is vetoed it will be vetoed on the basis of this statement.

Appears Nervous Wreck.

Martin, when he surrendered himself, stated that he was the murderer of an old storekeeper in Washington on Seventh street, near the Carnegie Library, on November 17, last. He appears to be a nervous wreck.

His story is that he entered the store, struck the man over the head with a wrench, took the contents of the cash drawer and fled.

He says that he went to West Virginia and was under the impression that the man he assaulted was not dead.

Two weeks ago he picked up an old Washington paper, and in glancing over it saw that some one else had been arrested for the crime that he had committed. The thought that some one else would suffer a penalty—probably death—for his deed preyed on his mind to such an extent that he decided to give himself up.

Martin has been in Baltimore only a few days ago, and has been staying at the Levering House, a cheap lodging-house.

Second Confession.

This is the second "confession" in the Mickle murder mystery. About three weeks ago a man by the name of Stone walked into the Ninth precinct station and announced that he was the murderer. The police found that this man was in need of hospital treatment.

William H. Mickle was found dying on the floor of a rear room in his little tobacco store at 1044 Seventh street northwest, about 6:30 o'clock on the evening of Thursday, November 17. He had been struck two or more times in the back of the head with a ten-inch monkey wrench, which was later found upon the floor in the little room.

He died in the arms of his wife, without regaining consciousness a few minutes after the discovery of his prostrate form.

No clue was left by the murder with the exception of the ten-inch monkey wrench, and the discovery of a piece of brown paper in which this monkey wrench was wrapped.

Mgr. Aversa Mentioned To Succeed Falconio

No confirmation has reached the papal legation, it was stated today, as to which of several men now mentioned for the place vacant by Mgr. Falconio's promotion is because he is likely to be chosen by the Pope as his diplomatic representative in the United States.

Mgr. Giuseppe Aversa, now legate to Cuba, and Porto Rico, is mentioned persistently on the theory that the Pope will favor him because he spent three months here three years ago when he was a special envoy of the Pope on the question of negotiations between the American and Cuban governments for the settlement of church troubles growing out of the long fight for Cuban freedom.

Steel Men Get More Time to File Answer

TRENTON, N. J., Dec. 26.—Consent orders, allowing an extension of time for filing answers by several of the defendants in the case of the Government against the Steel Corporation, have been received by Judge Lanning, in the United States circuit court.

Some of the defendants a few days ago secured an extension of time to file their answers. This extension was to January 15, but the extension granted other defendants today was to February 1.

Police Say Mother Gave Liquor to Her Child

That seven-year-old Mary Munro, a colored child, was overcome by whiskey given to her by her mother and a woman named Fannie Washington, is the charge filed against the two women in District Branch of Police Court today.

Last night about 6 o'clock Policemen Green and Harty, of the Fourth precinct, found the child overcome by liquor in her mother's home on Delaware avenue. Her condition was such that it was necessary to send her to the Emergency Hospital for treatment.

Breeders' Association Meets Here Thursday

The American Breeders' Association will hold its annual meeting Thursday, Friday, and Saturday of this week on the fifth floor of Masonic Temple. Acting Secretary of Agriculture, William M. Hays, will read a paper on "Constructive Eugenetics."

Hundreds of delegates, including many of the most prominent scientists of the country, will attend the meeting.

WEATHER REPORT.

TEMPERATURES.	
U. S. BUREAU.	APFLECK'S.
8 a. m. 35	8 a. m. 39
9 a. m. 35	9 a. m. 40
10 a. m. 36	10 a. m. 41
11 a. m. 36	11 a. m. 42
12 noon 37	12 noon 43
1 p. m. 40	1 p. m. 45
2 p. m. 42	2 p. m. 47

FORECAST FOR THE DISTRICT.
Rain or snow, probably tonight and Wednesday. Warmer tonight.

TIDE TABLE.	
Today—High tide, 2:08 a. m. Low tide, 6:14 a. m. and 6:30 p. m.	
Tomorrow—High tide, 12:20 a. m. and 12:52 p. m.; low tide, 6:56 a. m. and 7:18 p. m.	

SUN TABLE.	
Sun rises, 7:15 Sun sets, 4:45	

Last Minute News Told in Brief

ARRANGE EVIDENCE.

INDIANAPOLIS, Dec. 26.—Federal attaches have begun arranging the evidence which will be presented to the United States grand jury investigating the McNamara dynamiting conspiracy when it reconvenes here on January 3. Charles W. Miller, federal district attorney in charge of the probe, says the evidence is being arranged to supplement the outline of the case which thus far has been presented to the jury.

MAY BE A DYNAMITER.

PITTSBURGH, Dec. 26.—Police of Monaca, a steel and iron mill town near here, are investigating the record of a man giving his name as George

BRIDGES, who refuses to give an address.

He was arrested while carrying a suitcase filled with seventy-two sticks of dynamite, enough to blow up a huge plant in the Little Boh.ough.

BOLD-UP NETS \$1,800.

NEW YORK, Dec. 26.—New York was the scene of a "hold-up" that beggars the "wild and woolly West" in realism. Several score of men in a well-patronized restaurant in the upper west side were held up by ten masked bandits, compelled to stand aside by side along a wall and give up their valuables. The haul, the police records show, amounted to about \$1,800.

BRYAN'S FRIEND MISSING.

NEW YORK, Dec. 26.—Police headquarters has sent out a general alarm for William Patterson, aged sixty-five, of Lincoln, Neb., a friend of William J. Bryan. Patterson vanished Sunday, the anniversary of a fire which wiped out his home and fortune of \$40,000. He was visiting a daughter, Mrs. L. H. Gates, of Plainfield, N. J., and seemed melancholy because of financial losses.

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